

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GRACIE BAKED LLC,)
) 1:22-CV-04019-RPK-VMS
)
Plaintiff,) Brooklyn, NY
) August 28, 2024
vs.) 2:39 PM
)
GIFTROCKET, INC.,)
)
Defendants.)

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE VERA SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (All present by video or telephone):

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1 THE COURT: All right. So this case is Gracie Baked
2 LLC v. GiftRocket, 22-CV-4019. So let's start with the
3 appearances. So for the plaintiffs.

4 MR. RAPHAEL JANOVE: Good afternoon, Your Honor.
5 Raphael Janove for plaintiffs.

6 THE COURT: Anybody else for plaintiffs?

7 MS. LIANA VITALE: Liana Vitale, also for plaintiffs.
8 But Mr. Janove will be speaking.

9 THE COURT: Okay. So I saw that you just filed your
10 notice of appearance. Know that your -- what I imagine is your
11 old firm -- is still listed, so you should update your contact
12 with the court. You can reach out to the clerk's office or to
13 the ECF help desk is the easiest way to do that. All right.
14 How about for the GiftRocket defendants?

15 MS. MEGAN O'NEILL: Good afternoon, Your Honor. Megan
16 O'Neill for the GiftRocket defendants.

17 MS. KATHERINE BURGHARDT-KRAMER: Good afternoon, Your
18 Honor. Yeah, this is Katherine Burghardt-Kramer, also of DTO
19 law for the GiftRocket defendants.

20 MR. KEVIN WESTERMAN: Good afternoon, Your Honor.
21 Kevin Westerman of DTO law for the GiftRocket defendants.

22 MS. O'NEILL: And that's everyone for the GiftRockets
23 defendants, Your Honor.

24 THE COURT: Okay. All right. How about anyone else?
25 Sunrise.



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1 MS. GINA TONN: Your Honor, this is Gina Tonn from
2 Greene Espel on behalf of defendant Sunrise Banks.

3 THE COURT: Wait. What's your name? Say it again.

4 MS. TONN: Gina Tonn, T-O-N-N, and I'm from the Greene
5 Espel Law Firm.

6 THE COURT: Okay. So just so you know, the reason it
7 was a little confusing is just your listing doesn't have your
8 firm's name. It does in that you have the email address, but
9 not underneath your name. So I don't know. You also might
10 want to update that contact information.

11 MS. TONN: Thank you, Your Honor. We'll look into
12 that.

13 THE COURT: All right. Anybody else on the line?
14 Okay. Just to go back to the defendants. On a couple of the
15 defendants you have -- I'm just going to use your last names --
16 O'Neill, Burghardt-Kramer, and Westerman. But on the
17 Tremendous, you also have Attorney Schmidt and Delgado listed.
18 Are they still on the case?

19 MS. O'NEILL: Yes. They are.

20 THE COURT: Okay. Okay. All right. Just so the
21 record is clear I'm going to just note what we've read in
22 connection with having this conference. So we have the August
23 23rd letter from Defendants. Other than the bank at 183, we
24 have 185 from the plaintiff's law firm.

25 And some of these include attachments. I'm just



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1 giving you the main docket number, 186, which is from the DTO
2 Firm. We have 187, also from DTO. We have 188, also DTO. 189
3 from the plaintiffs here. I actually printed these out.
4 Moving through the paper, 190 from the plaintiff.

5 We have -- I think That is it. Is that it? Yeah.
6 Okay. So we put this on because of the issue about it wasn't
7 clear that your mediation is going to go forward. And then we
8 got all these filings. So I want to touch on a couple of
9 points. I've read all this stuff. My law clerk has read it.

10 When we get to it, if you want to say a bit more -- I
11 don't want to hear everything that's already in these letters,
12 because we've done that work -- and then talk about some future
13 timeline. Somebody on the call has a good amount of background
14 noise, so if you're not the person who's speaking, if you don't
15 mind, if you can mute yourself.

16 All right. So there's already been an issue about
17 talking about particulars or maybe not talking about
18 particulars in relation to mediation. But despite all of the
19 tension over mediation, is that going to move forward?

20 THE COURT: And there is deafening silence.

21 MS. O'NEILL: I'll go. There's deafening silence,
22 Your Honor. This is Megan O'Neill on behalf of the GiftRocket
23 defendants. That's a tough question to answer, given that we
24 had a mediation scheduled that was canceled in the way that I
25 can recite the sequence of events, but I'm taking what Your



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1 Honor said as not trying to not repeat what's in the filing.
2 So because it was canceled by plaintiffs, I don't think we're
3 the best person -- I'm the best person to answer that.

4 THE COURT: All right. Plaintiff's side.

5 MR. JANOVE: Yes, Your Honor. Raphael Janove. So
6 presently, (indiscernible) has not closed the mediation. The
7 mediator's administrator emailed us yesterday asking if we
8 wanted a new date. However, given how far apart we are and the
9 recent events and the history of getting to this point I think
10 it's unlikely that mediation is going forward at this time.

11 THE COURT: All right. I think you should keep open
12 the channels of communication. There's a lot more work to be
13 done. A lot of money to be spent and a very uncertain outcome
14 on some of the legal issues, which some are brief, others will
15 be briefed under the new point.

16 But you're going to spend a lot of time on this case
17 so if you can have a meaningful discussion, I think you should.
18 I'm sorry. I'm going to say what I said already. There's
19 some -- I don't know if it's feedback or background noise. But
20 if you don't mind muting yourself, if you're not speaking, that
21 would help.

22 All right. So in terms of the issues of which there
23 is a wide variety, is there anything that wasn't included here
24 that you think is necessary for me to consider in relation to
25 any of these issues? So start with defendants because you



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1 kicked this off, and then we could also hear from the Bank if
2 you have anything different from your co-defendants and then
3 plaintiffs.

4 MS. O'NEILL: Thank you, Your Honor. We'll go first
5 at your invitation. Again, this is, for the record, Megan
6 O'Neill. So I don't think there's anything that's not in the
7 papers, so I'll keep it fairly short because I do recognize how
8 busy your calendar is.

9 But we did ask for a special master, which is an
10 extraordinary request and not one that I've ever made in any
11 other case in twenty years. So it's not something I take
12 lightly. But we have raised this for the second time because
13 we have had an -- to use the word again -- extraordinary amount
14 of difficulty in this case.

15 And what was stated in our papers, maybe implicitly,
16 but I'll state explicitly, is that the main issue that we --
17 the reason we're looking for a special master is one, just
18 because we have so many discovery disputes. We've already had
19 fifteen discovery motions in this case.

20 We have fifteen not counting the Sunrise issues.
21 There are fifteen issues listed between the parties. But not
22 just because of the volume, but because of the fact that
23 compromises seem largely useless. We have agreements, and then
24 we have to retread the same ground over again.

25 And so we're finding ourselves stuck in the mud. We



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1 can't seem to move the case forward. We'd like to move the
2 case forward, and if we have to come back to Your Honor fifteen
3 more times, I just don't think that this case is ever going to
4 move forward.

5 And now that mediation is not on the table, I think
6 it's more important than ever that we move the case forward.
7 And so that's really why we're here today, not to go through
8 the discovery disputes that we've listed, but because we would
9 like some finality at some point on those issues.

10 And we don't want that finality to be every single
11 time a motion before Your Honor, which will just further delay
12 the case, because obviously you have a lot of cases on your
13 docket. So that's why we're making the request that we're
14 making.

15 THE COURT: All right. The Bank.

16 MS. TONN: Thank you, Your Honor. This is Gina Tonn
17 for Sunrise Banks. Just as a point of context and background,
18 as you would have seen in the filing, Sunrise Banks was just
19 joined as a defendant in this case back in April of this year.
20 We are in the process of working through some discovery
21 disputes, including document production and negotiation of
22 search terms.

23 We don't currently have any discovery disputes with
24 plaintiffs that need to be presented to Your Honor, and we are
25 optimistic that we'll be able to work through some of the



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1 negotiations with plaintiffs without bringing those to the
2 Court. And because we don't have anything that needs to come
3 to the Court on a discovery dispute right now, we are not
4 joining the request for a special master.

5 We understand that there have been a high volume of
6 discovery disputes in this case from before we were joined as a
7 defendant and continuing up to the present, but we don't
8 currently join that request. We don't oppose the request
9 either. We understand that there's been a lot of disputes, but
10 at this time, we don't have any live disputes to present to the
11 Court.

12 THE COURT: All right. And plaintiff.

13 MR. JANOVE: Thank you, Your Honor. And just first to
14 start to add with Sunrise Banks, Gina and I exchanged emails
15 and also met and conferred just before this conference as we've
16 been exchanging information about search terms and timelines.
17 And I can represent -- and, Gina, please correct me if I'm
18 misrepresenting this -- but we're exchanging search terms and
19 hit counts.

20 I've spoken to Sunrise Banks. We agree to their
21 proposal for a November 1st substantial completion of document
22 production deadline and a December 13th fact discovery deadline
23 to accommodate scheduling the remaining depositions. So as for
24 Sunrise, I don't think we have -- and there are no present
25 disputes, and both Sunrise and plaintiffs are optimistic that



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1 they will be able to resolve these without any court
2 intervention.

3 As to the GiftRocket defendants, I do agree with Mrs.
4 O'Neill that we want to move this case forward and avoid
5 unnecessary discovery disputes. One issue that would make this
6 case move forward quickly is whether Defendants will respond
7 and hopefully agree to our comprehensive discovery compromise,
8 which we met with the GiftRocket defendants on July 24th.

9 I included this exhibit in the filings. It's a
10 comprehensive proposal, which would move at least two-thirds of
11 the proposed potential future disputes that defense counsel has
12 put on as potential issues arising. So I think, honestly, if
13 we can get a response on that compromise, so many of these
14 issues will be muted and we'll move forward.

15 I do acknowledge, of course, that there have been a
16 lot of discovery disputes in this case. But I do think
17 given -- I don't think Plaintiff's positions have been
18 unreasonable, particularly given the track record and how the
19 discovery disputes have been resolved.

20 To the extent the GiftRocket defendants are unable to
21 come to an agreement with us -- for example, the July 24th
22 proposal may not be in line with what they want -- I don't see
23 any issue with us not briefing and filing motions to compel
24 that would be so extensive or unreasonable or unfounded that
25 this Court cannot quickly resolve them.



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1 But again, the process for meeting and conferring has
2 completely stalled and really, what we need right now is the
3 GiftRocket defendant's agreement to meet, to discuss with us,
4 to respond to our July 24th discovery compromise, and for all
5 the parties to work together on scheduling the remaining
6 depositions.

7 MS. O'NEILL: Your Honor, may I briefly respond? This
8 is Megan O'Neill.

9 THE COURT: All right.

10 MS. O'NEILL: The first point I just wanted to raise
11 was that while I am always delighted to hear parties getting
12 along and not having discovery disputes, it was in fact
13 Sunrise's production -- and I am not in any way agreeing with
14 Plaintiff's position, which again, was why we brought this to
15 the Court.

16 Sunrise's production had absolutely nothing to do with
17 anything related to the mediation agreement and came out of
18 left field when Plaintiff raised that. But it was in fact
19 plaintiff's complaint about Sunrise that led him to cancel the
20 mediation.

21 So while again, it's nice to hear that they worked out
22 a compromise today or yesterday after we asked for this
23 conference, it doesn't change the fact that it was, in fact,
24 what led him to cancel the mediation. So these disputes do get
25 in the way of all sorts of things, including resolution of the



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1 case ultimately.

2 And the second thing is just that Plaintiff's counsel
3 has stated -- by the way, for the record, it's Ms. O'Neill --
4 but Plaintiff's counsel has stated that there is a compromise
5 that's been sitting on the table to which we have not
6 responded.

7 But in fact, that is not the case and really
8 mischaracterizes what has happened, which is that the parties
9 jointly chose to focus on mediation and tabled all of those
10 discussions, and only when the mediation was canceled on August
11 19th due to Plaintiff's complaint about Sunrise's production,
12 did all of these things go back on the table, and one of the
13 main reasons that we came to the Court to ask for a special
14 master was what seemed like an egregious abuse of the discovery
15 process, which was --

16 THE COURT: I think you need to stop. I told you I
17 don't want to hear everything that's here. Okay. Stepping
18 back from this, two things. Everybody needs to bring the
19 temperature down. I mean, these letters are heated in an
20 absolutely unnecessary way.

21 And I think that you have to understand that while
22 this is not a huge case, it's a moderately big case because of
23 a couple of facts. Number one, you're trying to have a class
24 and there may be a lot of information about that. Number two,
25 it covers an extensive period of time of the defendant's



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1 operations.

2 Third, you just brought in this bank and all of the
3 work that goes along with that, and forth, there are absolutely
4 unsettled questions of law in this case that are being -- some
5 have been teed up, others will be teed up. So you are moving
6 through an uncertain field.

7 And how it will all work out to whom, or whichever
8 parties are happy with it, and who's upset, whatever, it will
9 happen, but it's going to be challenging and there is a good
10 amount of work and this discussion that there's a lot of
11 disputes, it doesn't seem to be an accurate description.

12 I would say there's not a lot of dispute. There's a
13 lot of work. And that means you have to work through what is
14 practical, what is doable, without a huge amount of, or an
15 extraordinary amount of expense that is proportionate to the
16 issues that I just identified as characteristics of this case.

17 And so nothing is egregious. Nothing is terrible. It
18 just is not what is going on here. But these letters are
19 coming in with an unnecessary level of heated dialog, and it
20 needs to be brought down several degrees because I don't think
21 it's moving anyone forward.

22 That's the big picture because there are challenges
23 and I'm sure you can work through them, but you need to focus
24 on getting that done and being patient about the fact that
25 there is uncertainty. So in terms of the relief that you do



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1 request, because I hear there's a lot about your interactions
2 here, in the end, you're really not asking for all that much.

3 I did not need to hear about the mediation. I get it.
4 It was a wrinkle. It's a disappointment in some parts, but
5 mediation is absolutely voluntary. You may be incentivized
6 differently along the way, depending on what happens with some
7 of the Court's decisions, either in discovery or in substance
8 on the motion practice.

9 If they're not ready -- plaintiff, if you're not ready
10 to do this, you're not ready. And you can keep putting it on
11 the table. I'll keep asking you about it. But the fact that
12 it didn't go ahead there, then maybe some lost investment in
13 terms of any fees you paid or whatever, however all that works
14 out, thinking these things through, moving yourselves towards a
15 resolution is not going to be wasted because the kind of focus
16 that you need for being ready for mediation is going to be
17 similar to what you need in terms of highlighting, focusing,
18 getting the discovery done.

19 So I didn't need to hear all the information about the
20 mediation, but it's also not going to lead to any particular
21 result here other than the extent you want information not on
22 the public record about the characteristics of some of your
23 discussions, that's fine.

24 So the sealing can happen and the redacted copies can
25 happen. So that's the mediation issue. It's touched on in a



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1 couple of the earliest letters. I'm going to just flag things
2 that are mentioned with regard to discovery and then come back.
3 They have issues about deposition, the July 24th proposal, and
4 the overall timeline.

5 These are summarized at I think 185-1. So we will
6 come back in a second to that. We're not having a special
7 master. This has gotten nowhere near the level of the volume
8 of discovery disputes that justify a special master. You are
9 working through most of your disputes, and we can work on, if
10 necessary -- and I don't see you being at this point -- a
11 streamlined process for presenting disputes so that they don't
12 slow things down.

13 It really definitely doesn't seem like you're having
14 that kind of a problem, so there's no special master here. In
15 terms of the discovery timeline, I think you do need some more
16 time. You have all these issues that you're saying that you're
17 letting me know that they exist, but that you aren't asking us
18 to resolve or asking me to resolve it, which suggests to me
19 that you can resolve it yourself, and certainly should put your
20 focus on that.

21 The reason I think you reasonably need more time is
22 not because you have these disputes, but I do think Sunrise has
23 really come into this very, very recently compared to something
24 that has a 22-docket number. So to be fair to Sunrise, and
25 also to you all dealing with Sunrise -- I guess it would be an



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1 eight-month period, but really, the earlier discovery that was
2 a possible focus from some of the parties was the
3 jurisdictional issue, which you all worked out, but that was
4 built into that schedule.

5 So in terms of really the active time that Sunrise has
6 been involved in this, I think, is relatively short and
7 justifies having more time and taking Plaintiff's proposed
8 theory of this case as you've offered it. While defendants are
9 separate entities, some of their activities, at least from
10 Defendant's position, are integrated.

11 And so even if you could say, well, there's different
12 tranches of discovery, there's the one for the defendants who
13 have already been in this for a while and the other for the
14 Bank. I think it's important to see it together, to see
15 whether the theory is a viable theory and whether it should
16 persist against the Bank or not, but talking about the facts,
17 not about the legal theory, but anyway.

18 So we'll reset an outside date for resolving this. I
19 mean, I should have said something more about the no special
20 master and the mediation issue. I'm not striking anything, you
21 can (indiscernible) it and I'm not awarding any sanctions, and
22 you can continue to work through your disputes.

23 Okay. So to go to the 188, just by way of example, is
24 your letter where you're giving us the, in quotes, a
25 non-exhaustive list of disputes that you really don't need to



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1 have resolved, so I'm not doing anything with that. But if you
2 can't work it out, you can let me know.

3 We have, I think in October, a first date for you to
4 give an update, and I think it might be a good idea to put a
5 conference date on it, and we'll do that in a little bit so
6 that we can discuss any of the issues that you raised. Okay.
7 So going back to what I think are your outstanding issues.

8 Let me just make sure I've got everything. All right.
9 So depositions. Well, let's do it in a different order. But
10 they're summarized. 185-1 is deposition, discovery compromise,
11 and the discovery schedule, which I've obviously
12 suggested/confirmed you're going to get some more time on that.

13 What's the defendant's position with regard to
14 responding to this July 24th proposal, which is plaintiffs say
15 they're waiting for you to respond? What's your take on that?
16 Not the content, just the process of getting to a process. You
17 might be on mute maybe.

18 MS. BURGHARDT-KRAMER: Hi, Your Honor. This is
19 Katherine Kramer for the GiftRocket defendants. We've been in
20 touch with Plaintiff's counsel about these issues to let him
21 know that we were going to get back to him later this week,
22 which we're happy to do as Ms. O'Neill said. All of these
23 issues were tabled for a long time because we thought we were
24 going to mediation.

25 THE COURT: Okay. All right. Do you want to commit



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1 to responding by the 30th? Do you want some more time built
2 in, given this is the Labor Day weekend, or what?

3 MS. BURGHARDT-KRAMER: Yeah, I think having some more
4 time -- so this is just for the issue of responding to the July
5 24th letter?

6 THE COURT: The July 24th, yep.

7 MS. BURGHARDT-KRAMER: I think if we could have until
8 September 6th.

9 THE COURT: Yeah. That's fine. Okay. So for that.
10 And then that's just your response. If you all need to talk
11 more, you can talk more. If it leads to identifying things
12 that you can't come to an agreement, that's fine. So this is
13 just to try, as everybody's been suggesting, to move things
14 forward.

15 All right. So the GiftRocket defense is going to
16 respond to the July 24th proposal from plaintiffs by September
17 6th. All right. And then thoughts about deposition scheduling
18 and let me make a couple observations having read all this.
19 There's a lot of talk about things needing to move in tandem.

20 I don't think that really makes any sense here. These
21 depositions, at least as they're briefly described, the
22 players, they're not really related. So you could have a track
23 of plaintiffs going forward, and you could have a track of
24 GiftRocket-related people going forward.

25 And once you get the documents from Sunrise, the



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1 Sunrise-related folks going ahead. My asterisk next to that
2 is, I think, to the best you can, you should only be doing the
3 depositions once, and if Sunrise is not caught up, depositions
4 should be scheduled in a way that they can usefully take their
5 examination of the witness.

6 So I think building that time in, in connection with
7 the exchange of information either to or from Sunrise, is
8 something useful for you all to consider. But I think there
9 are cases where the order of the depositions is important
10 because there could be real concerns about someone tailoring
11 their testimony to the circumstance or getting an insight into
12 a situation, more common in a discussion or conversation, or
13 whatever, deposition or testimony about a single event.

14 You can imagine that. I don't see that here at all.
15 So this is -- what are people's working schedules? What are
16 your respective schedules in terms of being able to prep your
17 witness, prepare for the deposition, get it done? I'm assuming
18 you're doing this by Zoom or some other similar platform so
19 that the travel shouldn't be anything significant, and again,
20 it's a heavy lift at the beginning, especially as you're
21 preparing for this, but really, you should be able to work out
22 this schedule.

23 So I really have two questions from this. I'm not
24 ordering any particular priority, but what I want to know is
25 how close are you to having a fairly certain list of who you



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1 want to depose and then moving towards the schedule. And are
2 you looking at, at least for this first round of depositions,
3 by what, mid-October maybe, having at least the principals
4 done, and I understand, because of the mediation, you had a
5 different timeline, and you may still be refreshing your
6 calendars and exchanging information.

7 So my question is the general, again, process question
8 of how close are you to knowing what you're going to be working
9 on in say the next six weeks I guess we're looking at. And I
10 mean, this is not the beginning of the deposition process,
11 but -- anyway, sorry. Let's go Plaintiff, since it was in the
12 185-1 one where you say that you've put the question to the
13 floor, so what's your thinking about it, and then we'll hear
14 from defendants.

15 MR. JANOVE: Thank you, Your Honor. Yes, we're, I
16 would say, 90 percent of the way on terms of the opponents we
17 want to take. We've noticed them. We've sent over our
18 30(b)(6) topics, which the defendants can split among
19 individual defendants if they want.

20 So we're most of the way there. I do want to say a
21 caveat that we aren't 100 percent certain on depositions as to
22 Sunrise Banks, given the status of the document production.
23 But generally speaking, I think the parties have a sense of the
24 potential opponents, and we can get those moving.

25 I only want to highlight that the first few weeks of



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1 October are a little bit tough for deposition scheduling, both
2 for members of these law firms, but also for some of the
3 clients and the deponents, given the Jewish high holidays. But
4 that's a long way of me saying we're pretty set in stone. We
5 have a good sense and certainly, depositions can start getting
6 scheduled and move forward.

7 THE COURT: Okay. So let me ask you, do you want to
8 target something to push because the holidays are later this
9 year so that September is super productive, or are you
10 suggesting that we kind of need to -- you kind of need to get
11 to maybe like the first week of November by having gotten a lot
12 done that can kind of go either way. What do you think?

13 MR. JANOVE: I think we'd like to not push everything
14 to November. We do have more documents. Also, depending on
15 the timing of what the GiftRocket defendants say in response to
16 the July 24th compromise, what additional documents we might
17 get as a result of that compromise, or if we are unable to
18 compromise additional potential motion practice, there is
19 potential that it would help us to have a little bit more time
20 to get additional documents so that we are deposing the
21 witnesses with the full record we need and don't have to later,
22 we finally got a document in discovery, we really need to ask
23 about this, and have to reopen that. But I think there are
24 certain witnesses that no longer are employed by either party
25 that we won't be expecting any new additional documents for.



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1 So at least those we could try to prioritize in terms of
2 scheduling.

3 THE COURT: Okay. So kind of two things there, right?
4 If you're not doing it during the holidays, then we're really
5 looking at the first three weeks of October being maybe not so
6 available. So I think you are looking at November. And then
7 in terms of nonparty depositions, are these folks appearing
8 voluntarily or are you subpoenaing them, and is that process
9 started?

10 MR. JANOVE: The defense counsel for GiftRocket and
11 Sunrise Bank had accepted service, and they are representing.
12 These are just former employees of the defendants.

13 THE COURT: Okay. All right. So basically, if I
14 summarize, you're working on it. You think if the compromise
15 is a successful compromise that may dictate some of the
16 direction of the depositions. If it's not, you'll have things
17 to work out, and then that will affect the deposition schedule.

18 You hope to do some in September. And even though you
19 suggested you want to avoid being in November, my calendar
20 would say that based on the timing considerations, you are
21 looking at November. Okay. On the defendant's side, any
22 thoughts about deposition?

23 MS. BURGHARDT-KRAMER: Sure. Thank you, Your Honor.
24 This is Katherine Kramer again for the GiftRocket defendants.
25 I think one of the concerns that we have is that before the



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1 depositions got taken off calendar, we had a date for mid-
2 August for the last of the plaintiffs. And so far, despite all
3 of the communications from plaintiffs and their statements
4 about being cooperative in this process and all of that,
5 they've refused to give us --

6 THE COURT: Enough with the commentary. Let's focus
7 on what needs to be happening. This does not --

8 MS. BURGHARDT-KRAMER: I think --

9 THE COURT: -- help. All right. So you want to --
10 you want the last --

11 MS. BURGHARDT-KRAMER: (Indiscernible) to get that
12 back on calendar is to get the -- the last plaintiff back on
13 calendar. I think if we can nail down a date for that, it'll
14 significantly facilitate being able to get other things
15 scheduled.

16 THE COURT: So who is it that you're looking for?

17 MS. BURGHARDT-KRAMER: This is plaintiff WeCare, and
18 it's a 30(b)(6) and then also individual of the principal but
19 all on the same day.

20 THE COURT: Okay. Okay. So you want the plaintiff.
21 And what about your general sense -- because it's your
22 witnesses, right, who at least is a big group of the potential
23 deponents. Do you agree? September is available. It might be
24 affected by the documents. The first two or three weeks of
25 October are difficult. And then later in October, I'm the one



Colloquy

1 who's suggesting this means a little bit of November it would
2 be available. Is that right?

3 MS. BURGHARDT-KRAMER: Yeah. Well, before the
4 depositions got taken off calendar, we had three defendant
5 witness depos scheduled and one Sunrise to occur before
6 mediation. So I think as long as we can get a date for WeCare
7 that is going to happen sooner rather than later, those should
8 be relatively easy to schedule because everybody was in the
9 process of getting prepared for those.

10 We just took them off calendar because we were
11 planning to go to mediation. So I think those should be
12 relatively easy to get back on calendar. There are some
13 difficulties with the 36(b)(6) issues. We need to work through
14 those.

15 We only got the topics from Plaintiff's counsel
16 relatively recently. We're still working on responses to
17 those. And then in conjunction with that, then figuring out
18 who the witnesses are going to be for the different 30(b)(6)
19 topics, because we do want to avoid having people depose more
20 than once.

21 So I think we'll be able to work through those issues,
22 hopefully, as long as we're getting reasonable positions and
23 responses from Plaintiff's counsel, whose ever to work through
24 all of those things and get the deposition scheduled. We had
25 in mind, aiming for a close effect discovery for mid-December,



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1 which I think would give us enough breathing room. My
2 understanding is that Plaintiff's counsel had been in agreement
3 with that as a target as well.

4 THE COURT: I think December 13th was mentioned
5 earlier, right?

6 MS. BURGHARDT-KRAMER: Correct.

7 THE COURT: All right. And then Sunrise, do you have
8 any deposition issues right now?

9 MS. TONN: Thank you, Your Honor. First, Sunrise
10 Banks, I think that as Mr. Janov mentioned, we've currently
11 stated that we'll aim for a substantial completion of documents
12 by November 1st, with the thought that most of our witnesses
13 would be deposed after our documents have been produced and
14 that window between early November and mid-December. But we
15 are open to working with the other parties to put together a
16 schedule, whether things are on separate tracks, just to make
17 sure that people only need to be deposed once, as Your Honor
18 mentioned earlier in this conference.

19 THE COURT: So are you able to participate in the
20 depositions that the plaintiff's and defendant's counsel are
21 deposing, meaning, are you going to -- have you had enough time
22 to catch up and be able to participate meaningfully?

23 MS. TONN: Your Honor, I do anticipate that we will be
24 able to participate meaningfully if things are scheduled later
25 in September or October. We did already participate in the two



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1 plaintiff's depositions that were held earlier this summer.

2 THE COURT: Okay. All right. Let's go back to
3 Plaintiff then. What about this last plaintiff whose
4 deposition was deferred? Can you get that entity and the
5 witness or witnesses back on track for the next couple of
6 weeks?

7 MR. JANOVE: Your Honor, I've reached out to the
8 client, who told me the last week of summer before Labor Day.
9 And he's mentioned that, in principle, that he was going to ask
10 if the defense counsel can provide a few alternate dates given
11 his schedule.

12 The one issue with scheduling that deposition is that
13 we have objections to the 30(b)(6) topics and Defendants have
14 not yet met and conferred with us over our objections to the
15 WeCare topics. So we at least need to meet and confer and get
16 to resolution on those topics before that deposition goes
17 forward.

18 So that's to say, I think, as Your Honor said earlier,
19 we should work on a schedule if not necessarily a potential
20 sequence, but at least we should meet, confer, make sure that
21 the parties are in agreement over the scope of the 30(b)(6)
22 testimony that they're requesting for the last plaintiff. And
23 then if we resolve, we go forward. If not, we might have to
24 bring that issue to the Court's attention.

25 THE COURT: Sorry, I'm a little confused, though. I



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1 thought from Defendant's counsel's description that Plaintiff's
2 deposition was already on calendar. So how did the content of
3 the deposition become uncertain at the moment, as you're
4 describing it?

5 MR. JANOVE: Your Honor, if I may refrain, I don't
6 want to delve into more commentary, but basically, July 30th,
7 we served responses and objections to the 30(b)(6) topics
8 proposed for the third plaintiff. And then we agreed to
9 mediate the GiftRocket defendant's offer to take off the
10 deposition in exchange for mediation.

11 Things kind of got into somewhat of a holding pattern,
12 so we still haven't met and conferred on those actual topics.
13 When we served that, our assumption was we're going to meet and
14 confer shortly, and hopefully, we come to a resolution on those
15 topics, and my deposition would go forward, if not, and we
16 didn't resolve those issues, we would do what would have to be
17 necessary if there was a disagreement on the topic in the scope
18 of questioning.

19 THE COURT: All right. I'm just looking at the
20 calendar. All right. I think you should be aiming to do the
21 postponed depositions by early October because it seems like
22 you had the momentum, you had the focus. The witnesses knew
23 they were going to have to be available, and that puts you,
24 say, if we are talking about October 2nd, that's before the
25 holidays they're starting.



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1 So I think get that far unless there's some very
2 difficult roadblock, then, whatever, we're going to adjust it,
3 but that's, I think, what you should be aiming for. I'm just
4 looking at the other issues. Okay. So the other dates, right
5 now, what we have is by September 6th, the defendants are
6 responding to the July 24th proposal.

7 By October 2nd, you would, hopefully, conduct that
8 plaintiff's deposition that was rescheduled, as well as the
9 other depositions that were postponed. Then also, October 1st,
10 you would give me an update. And then you're working on
11 finishing the paper discovery, including the Sunrise material
12 by November 1st, and then December 13th, you are talking about
13 wrapping this up.

14 That's a fact discovery. The other issues that you
15 had identified the schedule for, I think we're not going to set
16 those until we know more about how you're moving ahead and
17 where the motion practice may be. Okay. So are there other
18 immediate dates or issues?

19 MS. O'NEILL: Your Honor, this is Megan O'Neill for
20 GiftRocket defendants. Two issues. One -- or I should say
21 proposal. The first one would be we've agreed -- the parties
22 have agreed on this December 13th date. But could we put a
23 date in of, say, December 18th for us to jointly submit a
24 proposal for the remaining dates? That way it doesn't linger
25 for months afterwards and then the Court has to issue an order



Colloquy

1 for us to come back.

2 THE COURT: That's for the class cert and the experts?

3 MS. O'NEILL: Correct.

4 THE COURT: Yeah. That's fine. I think that would be
5 a good time to do it.

6 MS. O'NEILL: Great. And then the second was just a
7 request for clarification. You had talked about there were
8 filings where we'd asked for some of the settlement discussions
9 to be withdrawn altogether so that the Court did not see those,
10 and perhaps Your Honor has already seen them.

11 But we would like to avoid any other trial judge from
12 those things just being in the record period. So if Plaintiff
13 would be agreeable, at this point, I don't know that there's
14 any need for it anymore, given we've had the discussion today.
15 So if -- and that's ECF-185. And if those substantive --
16 anything related to settlement discussions or offers could be
17 removed and then refiled. I wasn't sure if Your Honor was
18 saying that should be done or was saying that it shouldn't be
19 done, but we wanted to clarify and then also make that request.

20 THE COURT: All right. So on the current record,
21 which I don't think has the plaintiffs agreeing, I don't think
22 this should be withdrawn. I don't think it's a real concern
23 that we know about your particular process and -- whatever.
24 People take different positions all along and the Court may
25 know about it or might not know about it.



Colloquy

1 And we don't have enough information to put any of it
2 in a context to form any opinion about whether any particular
3 proposal is reasonable or unreasonable. So I don't think it
4 has any effect on any decisions. The ceiling was more for your
5 external considerations, which is if you're -- I have no idea,
6 your business competitors, anyone who might be interested in
7 the benefit or vulnerabilities that are generated by settlement
8 discussions, that that should be confidential.

9 As well as the sort of meta point that as far as
10 possible settlement discussions should be conducted with
11 relative freedom, certainly, what's in here can't be used as an
12 evidentiary point along the way of any kind of assessment. But
13 it was filed with the Court. We know about it. I'm not taking
14 it out of the record.

15 But to go back to what I believe I said, which is that
16 you can feel -- I think you've already made this proposal --
17 but feel the parts of these letters that have to do with the
18 settlement process and/or the settlement discussion, the
19 particulars.

20 I know there's the back and forth about well, we
21 didn't really talk about the particulars until this got farther
22 along. The whole thing about the back and forth, about
23 canceling the mediation, why, all of that, I don't think it's
24 relevant to anything that's really being decided.

25 I don't think it needs to be in the public record,



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1 because it's an ancillary issue related to settlement and
2 settlement process. So the short answer is no, I'm not taking
3 it out of the record, but it can be -- and when I say field, it
4 would mean the parties and parties counsel and the Court can
5 see the document, but the public can't.

6 All right. Are there any other issues that need
7 resolution here? Okay. Let me go back to one point I made,
8 which is I have the October 1st date. We set that because you
9 were going to have an upcoming conclusion to your fact
10 discovery.

11 I think it would be good to check in, and that is
12 after you hopefully will have done -- I'm hopeful that you'll
13 have done the depositions that we just talked about. But I'll
14 look to you for some input as to whether that is a useful
15 juncture or do you want to push it out to say, November 1st,
16 which would be when Sunrise is coming in with all of their
17 materials and you're moving on to this next portion of your
18 process. It's up to you. I just want to make sure it's moving
19 along.

20 MS. BURGHARDT-KRAMER: I think for the GiftRocket
21 defendants, we think it would be helpful to have another check-
22 in with the judge, with the Court, since we have the October
23 1st date on calendar. Is that set for -- I'm sorry, I don't
24 have (indiscernible). Is that for a filing?

25 THE COURT: The order was for a filing, and before I'd



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1 calendared the holidays, what I thought was we would then, if
2 we needed a conference, be able to have a phone conference,
3 say, a week later. But I don't know what everyone's
4 availability is.

5 And then I think what I had said earlier today was
6 maybe we should tentatively put something on the calendar just
7 in case there does need to be follow-up, and if there isn't,
8 then we can take it off. But you tell me your availability.

9 MS. BURGHARDT-KRAMER: I think we're certainly open to
10 it. Given the disputes that have come up so far, it may be
11 helpful to have something on the calendar to check back in and
12 provide the Court with an update. I don't have a strong
13 feeling whether it's early October or early November. I don't
14 know what Plaintiff's counsel thinks about that.

15 THE COURT: All right. What's your availability? I
16 mean, I think if we're going to stick with the first filing, we
17 should put something on. And I'll just throw out a date, which
18 would be, say, noon, East Coast time on Tuesday the 8th. But
19 I'm being mindful of your holiday, school, et cetera, schedule.

20 MS. BURGHARDT-KRAMER: It's fine for me, Your Honor.

21 THE COURT: Okay. How about somebody from Plaintiff's
22 side and someone for Sunrise?

23 MR. JANOVE: Sorry, I was just looking at the high
24 holiday calendar. Yes, that time works for plaintiffs.

25 THE COURT: Rosh Hashanah is the first week of



Colloquy

1 October. Yom Kippur is the 11th. And then the third holiday,
2 I don't have it in front of me, but we're looking at the week
3 in between those two.

4 MR. JANOVE: Yeah.

5 MS. TONN: And October 8th works for Sunrise Banks as
6 well, Your Honor.

7 THE COURT: All right. All right. So we're going to
8 say joint letter October 1st at noon, East Coast time, on the
9 8th. And if it turns out you're all moving along swimmingly,
10 we'll take it off the calendar, but -- all right. I have
11 confidence that you can do this. Move it along smartly and
12 efficiently. All right. Thanks, everybody. Have a good day.

13 MS. TONN: Thank you, Your Honor.

14 MS. VITALE: Thank you.

15 MS. O'NEILL: Thank you, Your Honor.

16 (Proceedings concluded at 3:34 o'clock, p.m.)

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C E R T I F I C A T I O N

I, Jeannine McFee, court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



December 7, 2024

Jeannine McFee, CDLT-147

DATE

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